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8
9 Attorney for Plaintiff

10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE DISTRICT OF OREGON

12 MEDFORD DIVISION

13
14 BRANDY FAGER, personal representative
15 of the ESTATE OF BENJAMIN FAGER,

16 Plaintiff,

17 v.

18 COUNTY OF JACKSON, by and through
19 the Jackson County Jail, a "public body;
20 and STATE OF OREGON, by and through
21 its Department of Corrections, a "public
22 body,"

23 Defendants.

24 Case No.

25 COMPLAINT FOR WRONGFUL
26 DEATH

(Jury Trial Requested)

27 Plaintiff alleges:

28 1.

29 Federal court jurisdiction is based upon 42 USC 1983, a statute protecting basic
30 human rights. Jury trial is requested.

31 2.

32 Brandy Fager is the duly appointed personal representative of the estate of Benjamin
33 Fager, who is deceased.

34 ///

3.

The Jackson County Jail is operated by Jackson County, which is a "public body" within the meaning of Oregon Revised Statutes chapter 30. Tort claim notice was timely given to Jackson County within the time allowed by law.

4

Oregon's Department of Corrections is run by the State of Oregon, which is also a "public body" within the meaning of ORS chapter 30. Tort Claim notice was also timely given to the State of Oregon within the time allowed by law.

5.

Benjamin Fager had served his country in the military in Iraq and Afghanistan, had been injured in combat, and had been sent home with physical and mental wounds, including post-traumatic stress disorder.

6.

On or about November 29, 2010, Fager was arrested on charges of a sexual nature, and was lodged at the Jackson County Jail in Medford, Oregon.

7

Between November 29, 2010 and January 9, 2011 Fager had expressed suicide intentions in direct oral communications with law enforcement officers, and also in letters to his loved ones, which were read by law enforcement officers. In addition, in early January 2011 Fager had expressed suicide intentions to his own attorney, who had passed on suicide warnings to those responsible for the mental health of prisoners at the jail.

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1 8.

2 Oregon Administrative Rules (hereinafter OAR) 291-076-0010 (3) expresses the
3 legislature's policy that Oregon's Department of Corrections must "provide medical
4 assistance whenever an inmate demonstrates, or is reported to be at risk of self-destructive
5 behavior."

6 9.

7 OAR 291-076-0020 (3) provides that inmates at risk must be given a "suicide
8 assessment," which is defined as "a brief but formal assessment of mental status conducted
9 by a mental health provider or a registered nurse in consultation with the mental health
10 provider, concluding with a judged level of suicidal risk."

12 10.

13 OAR 291-076-0020 (5) requires that an inmate judged to be at "moderate risk" of
14 suicide must be placed on "suicide close observation," which requires that "unobstructed
15 visual observation of the inmate is required at staggered intervals, not to exceed 15 minutes,
16 with recorded observation within each 15 minute interval."

17 11.

18 OAR 291-076-0020 (7) requires that an inmate judged to be at "high risk" of suicide
19 must be placed on "suicide watch," which requires that "unobstructed one-to-one view of the
20 inmate is required at all times with recorded observation within each 15-minute interval."
21

22 12.

23 From early January 2011 through January 9, 2011 Fager was at high risk of
24 committing suicide, and at times before early January he was at least at moderate risk for
25 committing suicide.

26 ///

1 13.

2 Despite these suicide risks, jailers and medical personnel charged to safely guard
3 Fager and to provide him needed mental health services, neglected to appropriately respond
4 to the suicide risk, and were deliberately indifferent to his serious medical needs, in violation
5 of 42 USC 1983 and of the Eight Amendment of the U.S. Constitution.

6 14.

7 Because of this indifference, a very despondent Benjamin Fager, a decorated military
8 hero who had served his country in a time of war, hung himself in the Jackson County Jail
9 during the evening of January 9, 2011. He died on January 14, 2011 from anoxic brain
10 injury, due to asphyxiation, due to the hanging.

11 15.

12 As a result of his death, the estate of Benjamin Fager has suffered the following
13 losses:

14 (a) The disability, pain, and suffering he endured between the hanging on
15 January 9, 2011 and his death on January 14, 2011;

16 (b) The pecuniary loss his spouse, children, stepchildren, and parents have
17 suffered because of his death;

18 (c) The loss of his society, companionship and services suffered by his spouse,
19 children, stepchildren, and parents.

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23 ///

1 WHEREFORE, the Estate of Benjamin Fager prays for full and fair compensation for
2 these losses, together with costs and disbursements incurred herein.

3 DATED this 9 day of January, 2013.

4
5 KELLY L. ANDERSEN,
6 A PROFESSIONAL CORPORATION
7

8 By _____
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